In the Supreme Court of the United States

OCTOBER TERM, 1956.

No. ~~686~~ 65

UNITED STATES OF AMERICA, *ex rel.*
STEVE AVRAMOVICH,

Petitioner,

vs.

JOHN M. LEHMANN,
Officer in Charge, Immigration and Naturalization Service,

Respondent.

PETITION FOR A WRIT OF CERTIORARI
To the United States Court of Appeals
For the Sixth Circuit.

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THE GATES LEGAL PUBLISHING CO., CLEVELAND, OHIO—MAIN 1-5847

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PETITION FOR A WRIT OF CERTIORARI
To the United States Court of Appeals For the Sixth Circuit.

Now comes Henry C. Lavine, Attorney, on behalf of the petitioner, and prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit affirming the order of the United States District Court for the Northern District of Ohio, Eastern Division, which had denied the petitioner's application for a writ of habeas corpus.

OPINION BELOW.

The opinion of the Court of Appeals is set forth in the Appendix, *infra*, p. 11, and is reported in 235 F. 2d 260.

JURISDICTION.

The judgment of the Court of Appeals was entered on August 1st, 1956 (App. *infra*, page 15). Petition for rehearing, timely filed, was denied on October 12, 1956 (App. *infra*, p. 15). The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

QUESTIONS PRESENTED.

1. Whether the petitioner had been a member of the Communist Party of the United States as that term was defined by this Court in *Galvan vs. Press*, 347 U. S. 522, or whether he has been only a "nominal" member and therefore not subject to deportation.

2. Whether, notwithstanding *Galvan vs. Press*, the statute providing for deportation of aliens for past membership in the Communist Party is unconstitutional on its face, or as applied to the facts in this case.

STATUTES INVOLVED.

Section 22 of Internal Security Act, 1950, 64 Statutes 1006-1008.

Section 22 of that Act provides, page 1008:

> "Any alien who was at the time of entering the United States, or has been at any time thereafter * * * a member of any one of the classes of aliens enumerated in section 1(2) of this Act, shall, upon the warrant of the Attorney General, be taken into custody and deported * * *. The provisions of this section shall be applicable to the classes of aliens mentioned in this Act, irrespective of the time of their entry into the United States."

And on page 1006:

> "* * * aliens who are members of or affiliated with (i) the Communist Party of the United States.

(2) * * *

(C) Part 4 of Section 22 of Internal Security Act of 1950.

(A) 241.(a) (6) (c). (a) Any alien in the United States shall upon the order of the Attorney General be deported who

(6) Is or at any time has been, after entry, a member of any of the following classes of aliens:

(c) Aliens who are members of or are affiliated with (1) the Communist Party of the U. S.; (2) Any other totalitarian party of the United States; (3) the Communist Political Association; (4) the Communist or any other totalitarian party of any State of the United States; of any foreign state or of any political or geographical subdivision of any foreign state; (5) any section, subsidiary branch, affiliate or subdivision of any such association or party; or (6) the direct predecessors or successors of any such association or party, regardless of what name such group or organization may have used, may now bear, or may hereafter adopt: Provided, That nothing in this paragraph or in any other provision of this Act, shall be construed as declaring that the Communist Party does not advocate the overthrow of the government of the United States by force, violence or other unconstitutional means."

STATEMENT OF THE CASE.

The order of deportation in this case is under Section 22 of the Internal Security Act on the basis of past membership in the Communist Party.

The order of deportation was based entirely upon the voluntary statements which the petitioner made to the Immigration Service.

The appellant is now about 66 years old. He came to the United States from Serbia, which is now a part of

Yugoslavia, in September, 1911. He is a shoemaker by trade and conducts a shoe-repairing shop in Akron, Ohio. He has an invalid wife about 65 years old, and three children, all married, and has six grandchildren, all born in the United States. He has never before been arrested or convicted for any offense either in the United States or elsewhere. One of his sons served in World War II.

Appellant has always been a member, active in the affairs of the Serbian Orthodox Church in Akron, Ohio, and a short time before the issuance of this warrant of arrest in this case, in 1949 contributed the sum of $1000.00 to the building fund of this church in Akron.

Appellant's petition for naturalization filed in the Common Pleas Court of Summit County, Ohio, was denied in April, 1947, on the ground that his naturalization was prohibited by Section 305 of the Nationality Act of 1940, 54 Stat. 1137, 1141 (now 8 U. S. C. A. Sec. 1101 *et seq.*), by reason of his membership in the Communist Party of the United States.

The warrant of arrest in the deportation proceeding served on appellant in October, 1949, charged that he was an alien in the United States in violation of the Immigration Act of 1918 as amended, in that after entry he was a member of an organization, association, society or group advocating the overthrow by force and violence of the government of the United States. On January 17, 1950, a hearing was held before an officer of the immigration and naturalization service and testimony taken on the charges in the warrant of arrest. It appears that appellant was granted a de novo hearing on August 9, 1950, and by stipulation the transcript and exhibits of the prior hearing were made a part of the record. The de novo hearing was reopened November 29, 1950, to permit the introduction

of additional testimony, and at that time the further charge was lodged against the appellant that after his entry into the United States he had been a member of the Communist party, which membership was made a specific ground for deportation by the Internal Security Act of 1950, 64 Stat. 987, 1008.

At the conclusion of the hearings, the hearing officer of the immigration and naturalization service, on the basis of evidence presented, ordered the appellant deported to Yugoslavia. The appellant's objections to the order of deportation were overruled, his appeal to the board of immigration appeals of the department of justice was dismissed, reconsideration thereof denied, and a warrant for his deportation was issued.

From the evidence adduced at the hearings it is established that in 1935 or 1936 the petitioner joined a small workingman's group in Akron which was called the Communist Party of Akron. That he was a member of this group for about three years, when he resigned some time in 1938. That the dues were 10¢ per month, which were collected to pay for the electricity used in the different homes during the holding of these meetings, and that about eight or nine persons attended these meetings. That at no time was there any discussion of any activities involving communism or the overthrow of the government, or any other related subject, but that the only talk there was concerned how to go about obtaining more relief and more W. P. A. jobs.

That he was also a member of the International Workers Order, which was primarily handling insurance for its various members, and that the reason for his membership was because the rates for such insurance were very low. He retained his membership in the I. W. O. until he was advised by his counsel to resign.

He further gave his economic situation as a reason for joining the group called the Communist Party of Akron because, as he explained, he was living in his storeroom since he was unable to live elsewhere and the depression years of 1934 and 1935 deprived him of the ability to earn a livelihood in his trade; that several of his friends advised him to join this workingman's group in order to help him obtain the necessities of life; that he was in destitute circumstances. At that time he was supporting his wife and three growing children, and he stated quite frankly that the main purpose for joining this little Akron group was to make friends and try to get some help. (App. p. 10.)

That his membership at most was a nominal membership and resulted because of actual poverty, or economic reasons in order to obtain a livelihood as provided for in the Amendatory Statutes that where aliens had joined a proscribed organization as stated in *Galvan v. Press*, 347 U. S. 522, 74 S. Ct. 737 under (3) "to obtain the necessities of life, they were not to be deemed to have been *'members.'*"

REASONS FOR GRANTING THE WRIT.

1. This case presents the important question as to what is a "nominal member" under the qualifications in *Galvan vs. Press.*

Under the circumstances, an early decision by this Court applying the *Galvan* qualifications and indicating more specifically when an alien must be held to have been merely a "nominal member" of the Communist Party is essential for the proper administration of the Act, and will avoid protracted litigation.

2. The petitioner is to be deported solely on the ground that he was a member of this little group in Akron

which called itself the Communist Party of Akron and because the authorities decided that membership in this little group was membership in the Communist Party and that such membership was for a period of two or three years. In doing so the authorities deliberately overlooked the record which shows that his sole interest in joining this group, if it were the Communist Party, was for the sole purpose of his belief that in so doing the organization would assist him in obtaining additional relief and W. P. A. jobs, and none other. His motivation for such joinder was economic necessity and was hoping to be placed on relief.

It is our opinion that the facts in this case do not warrant the application of the decision in *Galvan v. Press* except that part of the decision which deals with the exception (3) on p. 740 of 74 Sup. Ct. which reads as follows:

> "to obtain the necessities of life, they were not to be deemed to have been 'members.' "

In any event we believe that the application of that decision to facts such as are found in the present case, are so fundamentally unfair and so devoid of a legitimate governmental purpose as to warrant determination by the Court as to whether the Statute sustained in *Galvan v. Press* can reach so far as to be constitutionally applied to the facts in this case.

CONCLUSION.

Because of our belief that the Statutory Cause for expulsion—mere membership, no matter how remote or innocent, is not reasonably connected to the objective of removing aliens, whose continued residence is injurious to our security,

The petition for a writ of certiorari should be granted.

HENRY C. LAVINE,

Attorney for Appellant.

APPENDIX.

WARRANT FOR ARREST OF ALIEN.

(Issued Sept. 23, 1949; served Oct. 19, 1949.)

UNITED STATES OF AMERICA

DEPARTMENT OF JUSTICE

Washington

2610—P-18993

No. A—3328855

To District Director of Immigration and Naturalization, Buffalo, New York —

Or to any Immigrant Inspector in the service of the United States.

WHEREAS, from evidence submitted to me, it appears that the alien STEVE AVRAMOVICH or AVERAMOVIC who entered this country at New York, New York ex SS "Europa" on the 4th day of October, 1934 has been found in the United States in violation of the immigration laws thereof, and is subject to be taken into custody and deported pursuant to the following provisions of law, and for the following reasons, to wit: The Act of October 16, 1918, as amended, in that he was, after entry, a member of the following class, set forth in Section 1 of said Act: An alien who is a member of an organization, association, society, and group that advises, advocates, and teaches the overthrow, by force and violence of the Government of the United States; and the Act of October 18, 1918, as amended, in that he was, after entry, a member of the following class, set forth in Section 1 of said Act: An alien who is a member of an organization, association, society, and group that writes, circulates, distributes, prints, publishes, and displays any written and printed matter advising, advocating and teaching the overthrow, by force and violence, of the Government of the United States.

I, by virtue of the power and authority vested in me by the laws of the United States, hereby command you to take into custody the said alien and grant him a hearing to enable him to show cause why he should not be deported in conformity with law. The expenses of detention, hereunder, if necessary, are authorized payable from the appropriation "Salaries and Expenses, Immigration and Naturalization Service, 1950." Authority has been granted for release under bond in the sum of $2000.

For so doing, this shall be your sufficient warrant.

Witness my hand and seal this 23rd day of September, 1949.

W. F. KELLY

Assistant Commissioner
Enforcement Division

EXCERPT FROM HEARING, AUGUST 9, 1950.

The *Galvan vs. Press* opinion came down in 1954. The hearings in this Avramovich case began in January, 1950, four and one-half years before the opinion in the *Galvan* case. In the hearing of August 9th, 1950, undersigned counsel was examining the appellant on the question of the circumstances surrounding his joining this particular Communist Party of Akron, and his reason for joining that organization. On page 20 of the record covering that hearing, the original of which is in the file before this Court, the following sworn testimony was given:

"Q. How many people did you know there at the time you joined?

A. I didn't know anybody.

Q. Did anyone know you? You said you were introduced?

A. They knew me from the people, and they knew several people who were in my store.

Q. You mean customers?

A. Yes, sir.

Q. Was it your customers who asked you to join?

A. Yes, that's how I became acquainted with them.

Q. Did you know the ideology or the Constitution of the Communist Party when you joined?

A. No.

Q. Did anyone explain it to you?

A. No.

Q. At that time, when you joined, what was the purpose of your joining that organization?

A. Well, the main purpose, as I recall—as I have been thinking about it—was to get friends and try to get some help.

Q. What kind of help?

A. Financial, business help as I was living in a store and there was no business, naturally I accepted anything to make my living. Since the Communist Party were showing themselves as friends, I figured it would be a help to me.

OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

(Decided August 1, 1956.)

Before ALLEN and MILLER, Circuit Judges, and STARR, District Judge.

STARR, District Judge. Avramovich appeals from an order of the district court denying his application for a writ of habeas corpus to test the legality of the order for his deportation.

Appellant, who was born in what is now a part of Yugoslavia, first entered the United States in 1911. In 1920 he returned to Yugoslavia and remained there until 1925, when he reentered the United States. In 1931 he went to Russia as one of a group under contract with the Amtorg Trading Corporation, which represented the Russian government in the United States. While in Russia he was employed as an instructor in the making and repairing of shoes. He returned to the United States in 1934 and has resided here continuously since that time. His petition for naturalization filed in the common pleas court of Summit county, Ohio, was denied in April, 1947, on the ground that his naturalization was prohibited by § 305 of the Nationality Act of 1940, 54 Stat. 1137, 1141, by reason of his membership in the Communist Party of the United States.

The warrant of arrest in the deportation proceeding served on appellant in October, 1949, charged that he was an alien in the United States in violation of the Immigration Act of 1918 as amended, in that after entry he was a member of an organization, association, society or group advocating the overthrow by force and violence of the government of the United States. On January 17, 1950, a hearing was held before an officer of the immigration

and naturalization service and testimony taken on the charges in the warrant of arrest. It appears that appellant was granted a de novo hearing on August 9, 1950, and by stipulation the transcript and exhibits of the prior hearing were made a part of the record. The de novo hearing was reopened November 29, 1950, to permit the introduction of additional testimony, and at that time the further charge was lodged against the appellant that after his entry into the United States he has been a member of the Communist party, which membership was made a specific ground for deportation by the Internal Security Act of 1950, 64 Stat. 987, 1008.

At the conclusion of the hearings, the hearing officer of the immigration and naturalization service, on the basis of evidence presented, ordered the appellant deported to Yugoslavia. The appellant's objections to the order of deportation were overruled, his appeal to the board of immigration appeals of the department of justice was dismissed, reconsideration thereof denied, and a warrant for his deportation was issued.

On July 23, 1954, appellant filed an application in the district court for the writ of habeas corpus, in which he claimed, among other things, that he was not a member of the Communist party; that the hearings on the charges against him were unfair; and that the action of the attorney general in issuing the warrant of deportation was arbitrary, capricious, contrary to law, and in violation of his constitutional rights. In his return to the application for the writ, the officer in charge of the immigration and naturalization service at Cleveland, Ohio, alleged that appellant was afforded full, complete, and fair hearings, and that the order and warrant of deportation were based upon substantial evidence. At the conclusion of the hearing the district court denied appellant's application for the writ, and he appeals.

The only question presented on this appeal is whether the evidence adduced in the deportation proceeding was sufficient to sustain the order of deportation issued pursuant to the provisions of the Internal Security Act of 1950, 64 Stat. 987, 1006, 1008. Section 22 of that act provides, page 1008:

> "Any alien who was at the time of entering the United States, or has been at any time thereafter, . . . a member of any one of the classes of aliens enumerated in section 1 (2) of this Act, shall, upon the warrant of the Attorney General, be taken into custody and deported. . . . The provisions of this section shall be applicable to the classes of aliens mentioned in this Act, irrespective of the time of their entry into the United States."

Section 22, 64 Stat. at page 1006, lists "aliens who are members of or affiliated with (i) the Communist Party of the United States." It appears that the foregoing provisions of the Internal Security Act of 1950 were in substance and effect incorporated into the Immigration and Nationality Act of 1952, 8 U. S. C. § 1251(a) (6) (C).

The evidence adduced at the hearings in the deportation proceeding, particularly appellant's own testimony, clearly established that in 1935 he joined the Communist party in Akron, Ohio, of his own free will and remained a member until 1938 or 1939; that he had a membership book indicating that he was a member of the party; that he paid dues; that he attended party meetings; that one or two party meetings were held in his store; and that he assisted a Communist party candidate in getting signatures on his election petition. He testified in substance that he supposed the Communist party in Akron which he joined was the Communist Party of the United States, and that he quit the party when he feared he would not obtain citizenship in the United States unless

he quit. It also appears from his own testimony that he joined the International Workers Order, an organization designated by the attorney general as subversive and under Communist domination; that while he was a member of the Serbian group of the International Workers Order, he served as minute secretary, financial secretary, president, and trustee; and that he remained an active member of that organization until he was advised by his attorney to resign, after he had been taken into custody in the deportation proceeding. In summary, appellant by his own testimony placed himself in the class of aliens subject to arrest and deportation upon the warrant and order of the attorney general.

The decision of the Supreme Court in *Galvan v. Press*, 347 U. S. 522, is controlling on the issues as to the sufficiency of the evidence and the validity of the warrant of deportation in the present case. In the *Galvan* case the court held section 22 of the Internal Security Act of 1950 constitutional, and said in part, page 528:

> "It must be concluded, therefore, that support, or even demonstrated knowledge, of the Communist Party's advocacy of violence was not intended to be a prerequisite to deportation. It is enough that the alien joined the Party, aware that he was joining an organization known as the Communist Party which operates as a distinct and active political organization, and that he did so of his own free will. A fair reading of the legislation requires that this scope be given to what Congress enacted in 1950, however severe the consequences and whatever view one may have of the wisdom of the means which Congress employed to meet its desired end."

See also *Rowoldt v. Perfetto*, 8 Cir., 228 F. (2d) 109.

In the present case there was substantial evidence that appellant was an active member of the Communist Party

of the United States, and under the provisions of the Internal Security Act of 1950 his deportation was mandatory. We recognize that deportation is a drastic measure, *Fong Haw Tan v. Phelan*, 333 U. S. 6, 10, and that the deportation of appellant will undoubtedly cause him and his family sorrow and hardship. However, the formation of our national policies regulating the entry and deportation of aliens is entrusted exclusively to the Congress, and it is not within the scope of the judiciary to question the wisdom of the Congress in providing for the deportation of certain classes of aliens. As said by Justice Jackson in *Harisiades v. Shaughnessy*, 324 U. S. 580, 590, "Judicially we must tolerate what personally we may regard as a legislative mistake."

The order of the district court denying the appellant's application for the writ of habeas corpus is affirmed.

JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

(Entered August 1, 1956.)

Appeal from the District Court of the United States for the Northern District of Ohio.

This cause came on to be heard on the transcript of record from the District Court of the United States for the Northern District of Ohio, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the order of the said District Court in this cause denying the appellant's application for the writ of habeas corpus be and the same is hereby affirmed.

ORDER DENYING PETITION FOR REHEARING.

(Entered October 12, 1956.)

The appellant's petition for rehearing is denied.

FILED
FEB 7 1957
JOHN T. FEY, Clerk

No. 65

In the Supreme Court of the United States

OCTOBER TERM, 1956

UNITED STATES EX REL. STEVE AVRAMOVICH, PETITIONER

v.

JOHN M. LEHMANN, OFFICER IN CHARGE, IMMIGRATION AND NATURALIZATION SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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415570—57

In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 686

UNITED STATES EX REL. STEVE AVRAMOVICH, PETITIONER

v.

JOHN M. LEHMANN, OFFICER IN CHARGE, IMMIGRATION AND NATURALIZATION SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (Pet. 11–15; R. 2c–5c) is reported at 235 F. 2d 260.

JURISDICTION

The judgment of the Court of Appeals was rendered on August 1, 1956 (Pet. 15; R. 1c) and a petition for rehearing (R. 6c–12c) was denied on October 12, 1956 (Pet. 15; R. 13c). The petition for a writ of certiorari was filed on January 9, 1957. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Whether the order for the deportation of petitioner as one who, after entry, had been a member of

the Communist Party is based on evidence showing more than nominal membership in the Party.

2. Whether this Court's decision in *Galvan* v. *Press*, 347 U. S. 522, should be overruled.

STATUTES INVOLVED

Section 22 of the Internal Security Act of 1950 enacted on September 23, 1950, 64 Stat. 1006, 1008, provided in part as follows:

> That any alien who is a member of any one of the following classes shall be excluded from admission into the United States:
>
> * * * * *
>
> (2) Aliens who, at any time, shall be or shall have been members of any of the following classes:
>
> * * * * *
>
> (C) Aliens who are members of or affiliated with (i) the Communist Party of the United States * * *, (iv) the Communist or other totalitarian party of any State of the United States, of any foreign state, or of any political or geographical subdivision of any foreign state; (v) any section, subsidiary, branch, affiliate, or subdivision of any such association or party, * * *.

Section 4 under the aforesaid Section 22 provided in part:

> (a) Any alien who was at the time of entering the United States, or has been at any time thereafter, * * * a member of any one of the classes of aliens enumerated in section 1 (2) of this Act, shall, upon the warrant of the Attorney General, be taken into custody and

> deported in the manner provided in the Immigration Act of February 5, 1917. The provisions of this section shall be applicable to the classes of aliens mentioned in this Act, irrespective of the time of their entry into the United States.[1]

Section 1 of the Act of March 28, 1951, 65 Stat. 28, 8 U. S. C. [1946 ed., Supp. V] 137–9, provided as follows:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Attorney General is hereby authorized and directed to provide by regulations that the terms "members of" and "affiliated with" where used in the Act of October 16, 1918, as amended, shall include only membership or affiliation which is or was voluntary, and shall not include membership or affiliation which is or was solely (a) when under sixteen years of age, (b) by operation of law, or (c) for purposes of obtaining employment, food rations, or other essentials of living, and where necessary for such purposes.

STATEMENT

Petitioner seeks review of the judgment of the Court of Appeals which affirmed the dismissal by the United States District Court for the Northern District of Ohio of his petition for a writ of habeas corpus. That petition attacked the validity of an

[1] These provisions were repealed by Section 403 (a) (16) of the Immigration and Nationality Act of June 27, 1952 (66 Stat. 163, 279). The 1952 Act recodified and reenacted these provisions without material change. See Section 241 (a) (6) (C), 66 Stat. 204, 8 U. S. C. 1251 (a) (6) (C).

order which directed petitioner's deportation on the ground that he was an alien who, after entry, had been a member of the Communist Party.

Petitioner, who was born in 1890 in that part of Europe which later became Yugoslavia, first entered the United States in 1911 (F. 76, 78, 79).[2] He left the United States in 1920 for Yugoslavia and returned in October 1925 with a wife and two children (F. 72, 73, 76, 124).[3] He was a shoe repairman by trade and engaged in such business in the United States (F. 51, 70, 124). In 1931, after the birth of a third child in the United States (F. 72), petitioner and his family went to Soviet Russia as a part of a group under contract with Amtorg Trading Corporation, a representative of the Soviet Government in the United States (F. 61–62, 75–76). In Russia, he was employed as an instructor in shoe repairing and manufacturing (F. 118). He returned to the United States in 1934 (F. 75). Since then he has resided continuously in Akron, Ohio, where he has continued to operate a shoe repair business (F. 70, 73–74). His petition for naturalization was denied in 1947 under the Nationality Act of 1940 on the basis of his membership in the Communist Party (F. 78, 124).

A warrant of arrest, dated September 1949, initiated the deportation proceedings against petitioner. It charged him with membership in an organization which advocated the violent overthrow of the United

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[2] The designation "F." refers to the immigration file, which we are herewith lodging with the Court. This file was part of the record in the Court of Appeals.

[3] These two children later became naturalized in the United States, and one of them served in the United States Army (F. 72).

States Government (F. 27). A hearing was held on this charge on January 17, 1950, but was invalidated by reason of the subsequent decision of this Court in *Wong Yang Sung* v. *McGrath*, 339 U. S. 33, holding that deportation hearings must be conducted in accordance with the Administrative Procedure Act. A hearing *de novo* conducted in compliance with the provisions of the Administrative Procedure Act was held in August 1950, and by stipulation the transcript and exhibits of the earlier hearing were made part of the record in the new hearing (F. 82–84, 131). The hearing was reopened on November 29, 1950, to permit the introduction of additional evidence (F. 93). At this hearing, the examining officer lodged the additional charge against petitioner that, after entry, he had been a member of the Communist Party—a specific ground for deportation under the then newly enacted Internal Security Act of 1950, *supra*, p. 2. Petitioner was permitted but did not desire additional time to meet the new charge (F. 91).

At the deportation hearings, petitioner testified that he had been a member of the Communist Party, International Workers Order (I. W. O.), and the Serbian Orthodox Church (F. 69). He had been a member of the I. W. O. since 1935 and during his membership he had been President, Minute Secretary (for which he received $7 a month), and a member of a three-man committee which audited the books of the Financial Secretary (F. 67, 68). He said he joined the I. W. O. principally to obtain its life insurance and sick benefits, and that discussions at the meetings never included advocacy of the overthrow of the

United States Government (F. 55). Upon advice of counsel, he resigned in November 1949, after his arrest under the deportation order (F. 69). The I. W. O. requested the American Protective Association to assist petitioner in the deportation matter but he refused its help (F. 50, 105–106).

Petitioner testified that he became a member of the Communist Party of the United States, West Side Unit of Akron, Ohio, in May or June 1935, after his return from Russia (F. 65, 67). He said he joined at the request and insistence of his customers, with the idea that it might help his business (F. 51, 105, 112).[4] He resigned in 1938 when he read about Earl Browder's arrest. At that time, petitioner had already applied for citizenship and was afraid that his membership in the Communist Party would interfere with his application (F. 65, 66). While a member, petitioner held no office (F. 64). He paid dues of 10 cents a month, but he did not attend meetings "very much." About two of the meetings were held in his store (F. 57, 64–65). He said that discussions at the meetings which he attended were centered principally around W. P. A. relief and how to secure employment; and that there never was any talk about the overthrow of the United States Government. He said that while he was a member he was unaware that the Party was anything but another political party which was interested in bettering conditions for the worker. He did not know then that it advocated the overthrow of our government by force and violence. Although

[4] Petitioner said that, after he joined the organization, he received more business "once in a while" (F. 107).

he read some of the Party's literature, it related mainly to improving the lot of the workingman (F. 56–57, 110). He testified that when he learned in 1938, through the Browder incident, about the subversive nature of the Communist Party, he immediately resigned (F. 65). When he joined the Party he did not take a loyalty oath to the Party but merely signed a folder with a card (F. 59, 113). After he ceased his membership in the Party in 1938, he did not attend any meetings, even though the remaining members unsuccessfully urged him to return to the Party—the last time "somewheres after 1940" (F. 63–64).

Petitioner said that he bought some pamphlets from the Party and subscribed to the Daily Worker for a few months. The paper was mailed to him until 1940 even though he had ceased paying for it. In 1940, with the assistance of his postmaster, he wrote to the organization to stop its delivery to him (F. 64). While a member of the Party, he assisted in obtaining signatures for a petition to secure the election of one of the Party members in a city election (F. 99).

As to his trip to Soviet Russia for Amtorg, petitioner said that his reasons for going were to make a living and to enable his wife, who was homesick for her homeland (Yugoslavia), to make a visit there. Petitioner also testified that he himself did not enter into a contract or deal directly with Amtorg, and that he paid the expenses of the trip to Russia out of his own pocket (F. 61, 62–63). While in Russia he instructed in shoe repairing, but did not join the Communist Party although requested to do so. He did,

however, become a member of "the professional organization." When asked if the professional organization was a part of the Communist Party, he said, "They were all one, I guess, but it is different between Communist Party, but it is one thing, I guess" (F. 59–60, 115–116). Petitioner did not consider himself a member of the Communist Party while he was in Russia (F. 59), although he was aware that Russia was communistic (F. 102). The expenses of his return trip to the United States were paid by "some Russian organization" (F. 101).

Petitioner said that he was, and had been for fifteen years, an active member of the Orthodox Church, and that he gave the church $1,000 in 1947—money which he had to borrow. His children were baptized in that church (F. 58, 89–90, 108, 109).

At the conclusion of the hearings, the hearing officer found petitioner deportable as an alien who had been, after entry, a member of the Communist Party (F. 135–140). His recommendation was approved by the Assistant Commissioner. An appeal to the Board of Immigration Appeals was dismissed, the Board concluding that petitioner's deportability was established by his own testimony (F. 154–155, 141–143). A motion for a rehearing alleging that the Communist Party of Akron, in which petitioner admitted membership, had no connection with the Communist Party of the United States was denied by the Board of Immigration Appeals on the ground that the evidence adduced at the hearing established the contrary (F. 161–164).

An order directing petitioner's deportation was issued on August 24, 1951 (F. 141–143). After petitioner was taken into custody in July 1954, for deportation, the petition for a writ of habeas corpus was filed. The District Court denied the writ. The Court of Appeals, affirming the order of the District Court, held that the decision of this Court in *Galvan* v. *Press*, 347 U. S. 522, was controlling and that "there was substantial evidence that appellant was an active member of the Communist Party of the United States" (Pet. 14–15).

ARGUMENT

1. Like the petitioner in *Rowoldt* v. *Perfetto*, No. 34, this Term, *sub judice*, petitioner here seeks (Pet. 6–7) to bring his case within the exceptions relating to involuntary or unknowing membership. See Act of March 28, 1951, *supra*, p. 3, and *Galvan* v. *Press*, 347 U. S. 522. In *Galvan*, this Court observed (pp. 526–528) that Congress had not intended to include within the term "members of," as used in Section 22 of the Internal Security Act of 1950 (*supra*, p. 2), those aliens who had joined the Communist Party when they were children, or who had become members by operation of law, or who had joined "to obtain the necessities of life," or those who "accidentally, artificially, or unconsciously in appearance only, are found to be members of or affiliated with an organization of whose platforms and purposes they have no real knowledge." The legislative history of Section 22, as well as the pertinent congressional comments on the Act of March 28, 1951, make it clear that Congress considered as involuntary only the membership

of those aliens, principally "Iron Curtain" emigres, who had been coerced to join communist organizations in their own countries for compelling economic reasons and as a minimum condition of subsistence. This history is fully set forth in the government's brief in *Rowoldt* v. *Perfetto*, No. 34, this Term, pp. 20–28, to which we respectfully refer the Court.

Petitioner is clearly not within any excepted category. He freely joined the Communist Party in a country and under conditions which did not make such membership a condition of employment. His own statements in the record, *supra*, p. 6, indicate at best that he joined the Party to improve his economic situation, and not as a minimum condition of subsistence.

Petitioner suggests (Pet. 5, 7) that his membership in the Communist Party of Akron was not necessarily membership in the Communist Party of the United States and, in addition, that he was ignorant of the Party's objectives. But the record shows that petitioner admitted that his membership was in the local unit of the Communist Party of the United States. And membership in any branch or subdivision of the Communist Party is ground for deportation (see Section 22, *supra*, p. 2). Furthermore, it is plain that petitioner is not a person unacquainted with communism. He went to Soviet Russia in the 1930's under contract with Amtorg, a representative of the Soviet Government. When he returned after a three-year visit, he joined the Communist Party and also the I. W. O., being an officer in the latter organization until the deportation

proceedings were initiated in 1949. His asserted ignorance of the objectives of the Communist Party must be considered in the light of his close association with communism over a period of many years. In any event, as this Court held in *Galvan*, in dealing with a similar contention, awareness of the Communist Party's purpose and program is not an essential condition of deportability under Section 22 so long as the alien knew that the organization which he joined was the Communist Party. 347 U. S. at 526.

2. Like Rowoldt, petitioner argues (Pet. 2, 7) that Section 22 is unconstitutional and urges a reconsideration of *Galvan*, which upheld the constitutionality of that Section as applied to a past member of the Communist Party. On this issue, we respectfully refer the Court to the government's brief in *Rowoldt* v. *Perfetto*, No. 34, pp. 38–43.

CONCLUSION

It is submitted that this case falls squarely within the ruling of this Court in *Galvan* v. *Press*. The Court, however, may wish to defer action on the petition until after it has rendered its decision in *Rowoldt* v. *Perfetto*.

Respectfully submitted,

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February 1957.

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SUPREME COURT
JAN
JOHN T. ... Clerk

In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 65

UNITED STATES OF AMERICA *ex rel.*
STEVE AVRAMOVICH,

Relator-Appellant,

vs.

JOHN M. LEHMANN,
Officer in Charge, Immigration and Naturalization Service,

Respondent-Appellee.

PETITION FOR RE-HEARING.

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In the Supreme Court of the United States

OCTOBER TERM, 1956.

No. 686.

UNITED STATES OF AMERICA *ex rel.*
STEVE AVRAMOVICH,
Relator-Appellant,

vs.

JOHN M. LEHMANN,
Officer in Charge, Immigration and Naturalization Service,
Respondent-Appellee.

PETITION FOR RE-HEARING.

Now comes the undersigned Henry C. Lavine, Attorney for the Petitioner, and presents this his petition for a re-hearing of the above-entitled cause, and in support thereof respectfully states that this Court denied the petition for certiorari filed in this case on the 16th December 1957, and therefore this petition for rehearing is timely.

We are prompted to file this Petition to bring to the attention of the Court the fact that on the 9th day of December, 1957, the Supreme Court, by a decision of 5 to 4, reversed the holding of the District and the Appellate Courts in the case of *Rowoldt vs. Perfetto*, No. 34, which was on the docket of this Court.

In November 1956, at the request of the Solicitor-General of the United States, this Court ordered that this case of Avramovich be held in abeyance until the decision by the Supreme Court in the said case of *Rowoldt vs. Perfetto*. The reason for such order holding the Avramovich case in

abeyance was because the two cases were greatly similar in fact and in the applicable law. Both cases were based on the exceptions provided in the case of *Galvan vs. Press*, 347 U. S. 522. The question involved in both cases was the question of whether a nominal member such as Rowoldt and Avramovich came within the purview of the law providing for deportation of aliens belonging to the Communist Party. The facts are so similar that Counsel desires to set forth herein the great similarity of the two cases, and certainly the same law and reasoning apply to both of them.

It is suggested here that the only reason for holding the case in abeyance was because of such great similarity and the same applicable law, and yet a few days before the denial of the Petition for Certiorari in Avramovich, the Court's opinion reversing the *Rowoldt* case sets forth the very same facts that are found in this Avramovich case, and in which, this Court denied the petition for Certiorari.

Here are the similarities of the two cases:

	Rowoldt	**Avramovich**
1.	About 74 years old.	About 67 years old
2.	Resident of the U. S. for 40 some years.	Resident of the U. S. for 44 years.
3.	Married and has children and grandchildren.	Married and has children and grandchildren.
4.	Never has been convicted of a crime.	Never has been convicted of a crime.
5.	Legal resident of the U. S.	Legal resident of the U. S
6.	Membership in the Communist Party admitted.	Membership in the Communist Party admitted.
7.	Held no office in the Communist Party.	Held no office in the Communist Party.
8.	Was a member of the I.W.O. and held minor office therein.	Was a member of the I.W.O and held minor office therein.
9.	Was a member for a year or two in the Communist Party.	Was a member for several years in the Communist Party.

	Rowoldt	Avramovich
10.	Resigned from the Party when he was arrested for deportation.	Resigned from the Party when he attempted to obtain citizenship.
11.	Claimed a lack of the necessities of life caused him to join, and, as he said, in a fight for bread and food.	Claimed he had to join because of lack of necessities of life. Could not pay rent, and had to live in a room back of his store with his family during the depression.
12.	Claimed to be a nominal member although admits running book store for the Communist Party.	Claimed to be a nominal member; was not active in any way for the Communist Party.
13.	Membership was established by alien's own testimony.	Membership was established by alien's own testimony. There was no other testimony in the case.
14.	He claimed that he never advocated change of government by force, and his testimony stood unchallenged.	He claimed that he never advocated change of government by force, and his testimony stood unchallenged.

A glance at the statement of facts describing the conditions existing at the time of this Petitioner's joining up with the Communist Party of Akron establishes that such joining was an act of desperation because, as he stated in the record, while his family was going hungry, he saw his customers carrying shoes to be repaired to another shoe repair shop and he was told by them that they were taking their business to their friends and members of their organization.

In joining up with this organization, it was not just a case of attempting to better his economic situation. It was a question of attempting to survive, attempting to obtain food and a roof over his head during a terrible depression that was existing at that time. As he stated, he joined the organization because he was in the hopes of more W. P. A. jobs and more relief for himself and his family. Such a joining was, of course, not for any political purposes or any

idealism; it is a plain matter of fact that the man and his family were practically starving and could not pay rent, and had to move into the rooms behind the shoe repair store to continue to exist.

We must call to this Court's attention that the opinion in the *Rowoldt* case which was released by this Court on the 9th day of December 1957, fits our case like a glove. It also fits the *Rowoldt* case in the same manner. Such appraisal of the opinion is not only mine. That the two cases are alike was also the opinion of the Solicitor-General of the United States when he filed his Brief in opposition to my Petition for Certiorari, where, in 1956, he suggests to this Court in his brief (last page) that:

> "The Court, however, may wish to defer action on the Petition until after it has rendered its decision in Rowoldt vs. Perfetto."

Of course, the Solicitor-General immediately saw the factual situation in both cases as being alike, and of course the applicable law would have to be the same, and it is only for that reason that he suggested to the Court that Avramovich be held until after the *Rowoldt* decision. This Court then complied.

We, on the other hand, did not object to it because we also knew that the two cases are as alike as two peas in a pod, and we also felt that whatever the opinion in the *Rowoldt* case would also decide the Avramovich case. Therefore we were greatly shocked and disturbed when notice was received that the petition for Certiorari in Avramovich was denied, and a re-reading of the opinion in the *Rowoldt* case indicates that probably an error was committed in the decision denying the petition for Certiorari in Avramovich.

Without attempting to detract from the merits of the *Rowoldt* case it is only fair that we do call the Court's

attention to the fact that Rowoldt had a greater experience and a greater involvement with Communism than Avramovich. After all, he was a salesman for the Communist Party either in charge of or working in a regular bookstore strictly dealing with communist literature. Also, in his discussion of communism, Rowoldt indicates a little wider knowledge of the workings of the Party than Avramovich could possibly have.

Our puzzlement should be understandable because it is true that not only the same or similar facts are contained in both cases, but also the same law and practically the same arguments and the same citations.

We also desire to call this Court's attention to the similarity of the purposes for joining the Communist Party as given by Rowoldt as set forth on page 148 of this Court's opinion and reads as follows:

> "The purpose was probably this—it seemed to me that it came hand in hand—the Communist Party and the fight for bread. It seemed to me like this—let's put it this way—that the Communist Party and the Workers' Alliance had one aim—to get something to eat for the people. I didn't know it was against the law for aliens to join the Communist Party and the Workers' Alliance * * *."

and also the statement of the purpose for joining as given by Avramovich which is on page 9 of the Petition for a Writ of Certiorari.

"Excerpt from Hearing, August 9, 1950:

> The *Galvan vs. Press* opinion came down in 1954. The hearings in this Avramovich case began in January 1950, four and one-half years before the opinion in the Galvan case. In the hearing of August 9th, 1950, undersigned counsel was examining the appellant on the question of the circumstances surrounding his joining this particular Communist Party of Akron,

and his reason for joining that organization. On page 20 of the record covering that hearing, the original of which is in the file before this Court, the following sworn testimony was given:

"Q. How many people did you know there at the time you joined?

A. I didn't know anybody.

Q. Did anyone know you? You said you were introduced?

A. They knew me from the people, and they knew several people who were in my store.

Q. You mean customers?

A. Yes, sir.

Q. Was it your customers who asked you to join?

A. Yes, that's how I became acquainted with them.

Q Did you know the ideology or the Constitution of the Communist Party when you joined?

A. No.

Q. Did anyone explain it to you?

A. No.

Q. At that time, when you joined, what was the purpose of your joining that organization?

A. Well, the main purpose, as I recall—as I have been thinking about it, was to get friends and try to get some help.

Q. What kind of help?

A. Financial, business help as I was living in a store and there was no business, naturally I accepted anything to make my living. Since the Communist Party were showing themselves as friends, I figured it would be a help to me.' "

From a reading of the testimony in both cases, it certainly appears that neither man joined the party for the purpose of overthrowing the Government of the United States by force, and it is very plain that both men joined the party out of necessity, Rowoldt for a job that he got and Avramovich to make friends and to keep his customers

from going to another shoe repair man, so that he could continue to live and exist during the years of depression, when they respectively joined up with the Party.

All in all, we cannot be mistaken when we say that those two cases are as two peas in a pod, and that the Solicitor-General was correct in asking this Court to hold this Avramovich case in abeyance until the *Rowoldt* decision, and that it appears from all of the circumstances here that an error was committed when the Petition for Certiorari in the Avramovich case was denied.

CONCLUSION.

For the foregoing reasons and to prevent a miscarriage of justice, this Court is respectfully urged to grant a rehearing at this time, and to set aside the Order of Denial of the Petition for Certiorari, and to reinstate this case, and to admit this case for Hearing before the Court, or in the alternative to admit the Petition for Certiorari and to order this Petitioner released and discharged from custody on the authority of *Rowoldt vs. Perfetto*.

HENRY C. LAVINE,
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Attorney for Petitioner.

Certificate of Counsel.

I, the undersigned counsel for the Appellant in the above-entitled cause, do hereby certify that the foregoing petition for a rehearing of this cause is presented in good faith and not for delay.

HENRY C. LAVINE,
Attorney for Petitioner.